

1  
2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF OREGON

9 CATHY A. WILDGEN, an  
10 unrepresented complainant  
11 individual and all other  
12 entities similarly  
13 situation,

OPINION AND ORDER  
CIV. NO. 04-6431-AA

12 Plaintiff,

13 vs.

14 DERRICK E. MCGAVIC, Attorney  
15 at Law, an enterprise affecting  
16 interstate commerce, DERRICK  
17 E. MCGAVIC, an individual  
18 predicate actor involved in  
19 schemes violating federal laws  
20 providing that fraud and  
21 extortion are criminal offenses,  
22 MICHELLE L. H. ING, an  
23 individual predicate actor  
24 involved in schemes violating  
25 federal laws providing that  
26 fraud and extortion are criminal  
27 offenses,

28 Defendants.

---

23 Cathy A. Wildgen  
24 1574 Coburg Road, #183  
25 Eugene, Oregon 97401  
26 Plaintiff Pro Se

26 Joel S. DeVore  
27 Luvaas Cobb  
28 777 High Street, Suite 300  
Eugene, Oregon 97401  
Attorney for defendants

1 AIKEN, Judge:

2 BACKGROUND

3 While plaintiff's ten-page amended complaint is largely  
4 incomprehensible, the court determines that plaintiff, appearing  
5 pro se, filed a RICO claim based on mail fraud and extortion  
6 against defendant lawyers. See Racketeer Influenced and Corrupt  
7 Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq.

8 Plaintiff alleges that the defendants "alleged a claim  
9 [against plaintiff] based on the putative contract, proffered as  
10 alleged evidence of an agreement to arbitrate." Plaintiff's  
11 Amended Complaint, p. 1. Plaintiff further alleges that based on  
12 defendant lawyers "superior knowledge" of the law and "driven by  
13 avarice, prodigality, greed, and envy" selected plaintiff "as a  
14 target for swindling circa November of the year 2003." Id.  
15 Specifically, plaintiff alleges that defendants are "engaged in  
16 the debt collection fraud racket . . . a wide-spread, far-  
17 reaching scam composed of artists such as [defendants]." Id. at  
18 p. 4.

19 Plaintiff alleges that the "scam" works as follows:

20 in a back room of the Chicago Board of Trade,  
21 worthless bundles of commercial paper, in the form of  
22 copies charged off consumer debt are sold at auction  
23 or from 'debt purchasing' organizations such as  
24 Collins Financial Services, Inc.[.] The typical  
25 investment in charged of evidence of debt is six  
26 cents on the dollar[.] The typical face value  
27 of the bundles is substantial. The original makers  
28 of the loans including mortgagees are rarely harmed  
because the lender has often have hypothecated the  
laws and have risked nothing. Actors up line  
from such artists as [defendants] break apart  
the bundles and resell the worthless commercial  
paper in clusters based on who the original lender  
is and what the geographic location of the origin  
of the individual copies. Actors such as  
[defendants] are the actual 'end users,' putative

1 holders in due course, then end users such as  
2 [defendants] allege they are third party debt  
3 collectors attempting to collect for the original  
4 maker of the loan. Artists such as [defendants] who,  
5 for a very small investment, use threat,  
6 coercion, intimidation, and deception to defraud  
7 and extort money and property from parties  
8 such as [plaintiff]."

9 Id.

10 The "sham legal proceedings" that plaintiff alleges  
11 defendants participated in are as follows: "(1) Standing to sue  
12 in the respective state court is never proved; (2) standing to  
13 sue as a bona fide holder-in-due-course is never proved; (3)  
14 corporate charter authority to make consumer loans is never  
15 proved; (4) corporate charter authority to sue for damages on  
16 consumer loans is never proved; (5) damages in fact are never  
17 proved; and (6) delegation of authority from enterprises such as  
18 [MBNA American Bank, N.A.] to predicate actors such as  
19 [defendants] is never proved. Id. at p. 4-5.

#### 20 STANDARDS

21 Summary judgment is appropriate "if the pleadings,  
22 depositions, answers to interrogatories, and admissions on file,  
23 together with the affidavits, if any, show that there is no  
24 genuine issue as to any material fact and that the moving party  
25 is entitled to a judgment as a matter of law." Fed. R. Civ. P.  
26 56(c). Substantive law on an issue determines the materiality of  
27 a fact. T.W. Electrical Service, Inc. v. Pacific Electrical  
28 Contractors Assoc., 809 F.2d 626, 630 (9<sup>th</sup> Cir. 1987). Whether  
the evidence is such that a reasonable jury could return a  
verdict for the nonmoving party determines the authenticity of a  
dispute. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248

1 (1986).

2 The moving party has the burden of establishing the absence  
3 of a genuine issue of material fact. Celotex Corp. v. Catrett,  
4 477 U.S. 317, 323 (1986). If the moving party shows the absence  
5 of a genuine issue of material fact, the nonmoving party must go  
6 beyond the pleadings and identify facts which show a genuine  
7 issue for trial. Id. at 324.

8 Special rules of construction apply when evaluating summary  
9 judgment motions: (1) all reasonable doubts as to the existence  
10 of genuine issues of material fact should be resolved against the  
11 moving party; and (2) all inferences to be drawn from the  
12 underlying facts must be viewed in the light most favorable to  
13 the nonmoving party. T.W. Electrical, 809 F.2d at 630.

#### 14 DISCUSSION

##### 15 1. Defendants' Motion for Summary Judgment

16 To state a claim under RICO, a plaintiff must show that the  
17 conduct of an enterprise through a pattern of racketeering  
18 activity injured plaintiff's business or property. Sedima,  
19 S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496 (1985). Plaintiff  
20 alleges predicate acts of mail fraud under 18 U.S.C. § 1341. To  
21 allege a violation of mail fraud, plaintiff must show that: (1)  
22 defendants formed a scheme or artifice to defraud; (2) defendants  
23 used the U.S. mail in furtherance of the scheme; and (3)  
24 defendants did so with specific intent to deceive or defraud.  
25 Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc., 806  
26 F.2d 1393, 1399-1400 (9<sup>th</sup> Cir. 1986).

27 Plaintiff seems to argue that defendants buy consumers' debt  
28 from creditors, who have charged off the debt, and then use

1 coercion or deception to defraud or extort money from parties  
2 such as plaintiff. Plaintiff assumes that defendants here  
3 purchased plaintiff's debt from her credit card company.  
4 Plaintiff alleges six predicate acts in support of her  
5 racketeering claim. They are: three collection letters, a letter  
6 providing debt information in response to her inquiry, a writ of  
7 garnishment, and the writ's cover letter. See Defendants' Exs.  
8 15, 16, 17, 18, 19a, 19b, 19c, and 20. In response to  
9 defendants' interrogatory, plaintiff explains that "these  
10 communications were falsely represented to be on behalf of MBNA  
11 American Bank, n.a., when in all likelihood, [defendants]  
12 purchased evidence of the debt and utter (sic) false papers  
13 thought (sic) the mail service to defraud [plaintiff]."  
14 Defendants' Ex. 21.

15 Regarding the fact that she has a credit card debt and that  
16 a court has already taken final action against her, plaintiff  
17 asserts that any legal proceedings against her are "sham," due to  
18 a failure to prove standing, and her debt is "bogus" because  
19 credit card debts are "non-transferrable."

20 Plaintiff's claims are denied and defendants' motion for  
21 summary judgment is granted. I find no facts whatsoever in  
22 support of plaintiff's claims. On March 9, 2004, the Circuit  
23 Court of the State of Oregon for Lane County in MBNA National  
24 Bank, N.A. v. Cathy A. Wildgen, entered a final judgment on an  
25 arbitration award for plaintiff MBNA against Cathy Wildgen. The  
26 plaintiff creditor, represented by defendants here, received the  
27 judgment in their favor. That judgment was clearly a judgment in  
28 favor of no party other than MBNA National Bank, N.A. I find no

1 evidence to support plaintiff's theory that defendants secured a  
2 judgment in their favor.

3 The judgment was awarded by the court based on supporting  
4 documents showing an arbitration award on a credit card agreement  
5 between plaintiff and MBNA and a resulting arbitration on  
6 plaintiff's debt. Plaintiff signed an application for a  
7 MasterCard account agreeing to be bound by the credit card  
8 agreement, "including arbitration." MBNA owned the creditor's  
9 rights to plaintiff's credit card debt at its inception, at  
10 judgment, and currently. I find no evidence that defendants here  
11 have ever owned, purchased, or been assigned any creditor's  
12 rights to this debt. Therefore, none of the six predicate acts  
13 relied on by plaintiff involved any false representations that  
14 MBNA was the creditor because MBNA is, in fact, the creditor.

15 Absent two or more predicated crimes, plaintiff's claim  
16 under RICO fails. See 18 U.S.C. §§ 1961, 1962 (racketeering  
17 activity); see also, All Direct Travel Services, Inc. v. Delta  
18 Air Lines, Inc., 120 Fed. Appx. 673, 2005 WL 23420 (9<sup>th</sup> Cir.),  
19 cert. denied, 125 S.Ct. 2548 (2005) (no extortion or mail fraud  
20 from defendants' issuance of debt memos and threat to terminate  
21 relationship if not paid; summary judgment granted when, absent  
22 predicate acts, no RICO claim possible).

23 Moreover, I find no evidence of any "pattern of racketeering  
24 activity." To show a "pattern," the predicate acts must be  
25 "indicative of a threat of continuing activity." A plaintiff  
26 must show more than a single fraudulent outcome involving a  
27 single victim. Here, plaintiff's allegation of a single harm to  
28 her "credit rating, her good name, and her business

1 opportunities," qualifies only as a single harm to a single  
2 "victim." This allegation is insufficient to show a pattern of  
3 racketeering activity even if this court were to accept that the  
4 six communications received by plaintiff qualified as "crimes,"  
5 which this court rejects. Therefore, because plaintiff cannot  
6 show a "pattern of racketeering activity," plaintiff's claim also  
7 fails for this reason as a matter of law.

8 Similarly, I find no evidence of extortion here. Extortion  
9 requires obtaining property from another with his consent induced  
10 by wrongful use of . . . force, violence or fear, or under color  
11 of official right." Grauberger v. St. Francis Hospital, 169  
12 F.Supp.2d 1172, 1178 (N.D. Cal 2001). Sending routine collection  
13 letters does not qualify as a use of force or violence. Further,  
14 defendants' actions, as private attorneys on behalf of a private  
15 corporation, are not acts of government officials. The fact that  
16 plaintiff was mailed collection letters prior to judgment or that  
17 she received a copy of a garnishment after judgment does not  
18 qualify as extortion within the meaning of the RICO statute.

19 Therefore, defendants' motion for summary judgment is  
20 granted as I find no disputed issues of material fact.  
21 Plaintiff's motion for summary judgment is denied.

## 22 2. Defendants' Motion for Non-Monetary Sanctions

23 Defendants move for non-monetary sanctions against plaintiff  
24 for plaintiff's initiation and prosecution of RICO claims against  
25 defendants. Defendants request that the court order plaintiff to  
26 provide community service "in the geographical area of the Eugene  
27 division of the court in the form of volunteer hours equal to the  
28 hours, not to exceed 40 hours, spent by defendants and their

1 attorney in defense of this action." Defendants suggest that  
2 plaintiff's hours be documented and approved by an officer of a  
3 non-profit organization, and that plaintiff shall "attest  
4 completion of community service, together with documentation and  
5 approval of the non-profit organization." Defendants also  
6 suggest two possible non-profit community organizations located  
7 in the Eugene area where plaintiff could serve her volunteer  
8 time.

9 Defendants' motion is denied although I applaud defendants'  
10 efforts at fashioning a non-monetary sanction. Plaintiff,  
11 appearing pro se, is afforded initial latitude from the court in  
12 prosecuting her lawsuit. However, the court warns plaintiff that  
13 any further attempts against these defendants, in this regard  
14 will, in fact, be met with sanctions. Defendants' summary  
15 judgment motion is granted and this lawsuit is dismissed with  
16 prejudice.

#### 17 CONCLUSION

18 Defendants' motion for summary judgment (doc. 16) is  
19 granted. Plaintiff's motion for summary judgment (doc. 24) is  
20 denied. Plaintiff's motions to Strike Defendants' Answer (doc.  
21 28), to Strike Defendants' Statement of Material Facts (doc. 29)  
22 and to Strike Defendants' Affidavits (doc. 30) are denied.  
23 Finally, defendants' motion for non-monetary sanctions (doc. 37)  
24 is denied. This case is dismissed with prejudice. All pending

25 ///

26 ///

27 ///

28 ///



1 motions are denied as moot.

2 IT IS SO ORDERED.

3 Dated this 12 day of September 2005.  
4  
5  
6

7 

8 Ann Aiken  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28